

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

Crl.Rev.Pet.No. 2072 of 2007()

CRMP.288/2007 of SPL.COURT (SPE/CBI)-II, ERNAKULAM
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REVN. PETITIONER/ PETITIONER:

ARUMUGHAN PILLAI ALIAS THAMPI,
S/O.KARUNAKARAN NAIR, AGED 56 YEARS,
RESIDING AT PRAYAGA, EAST KADUNGALLUR,
ALUVA, ERNAKULAM - 683 102.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.ANOOP JOSEPH
SRI.ANOOP.V.NAIR
SRI.ABHILASH AKBAR

RESPONDENT/ RESPONDENT:

CENTRAL BUREAU OF INVESTIGATION,
KOCHI BRANCH REPRESENTED BY THE
SUPERINTENDENT OF POLICE, KOCHI BRANCH,
ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 8/06/2007, THE COURT ON 15/06/2007 PASSED THE
FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.2072 of 2007

DATED THIS THE 15th JUNE 2007

ORDER

The revision petitioner is the accused in C.C.No. 2/2005 in the file of the Special Judge(SPE/CBI)II, Ernakulam and the order under challenge is the one in CrI.M.P.No.288/2007 of the Special Judge dismissing the application of the petitioner/accused for permission for his travel to U.S.A. and for remaining there for a period of two months from the date of obtaining a valid Visa and of course, as well as passport. The accused was caught in a trap laid by the CBI.

2. The petitioner had applied for permission to leave India in order to accompany his wife, who is a cardiac patient and is also suffering from sporadic epilepsy. The presence of his wife is essential as his only daughter living in Virginia in U.S.A. required the attention of his wife as the delivery of his daughter is expected on 7-7-2007 and as to leave his wife alone is risky.

3. The prosecution has stiffly opposed the application on the ground that the trial is at the fag-end and only the

investigating officer has to be examined. It is also pointed out that the accused was protracting the trial one way or the other so far. There is every likelihood that the accused may not return from U.S.A. and evade the process of law.

4. I find that the contention of the counsel for the revision petitioner that the court below has not applied its mind on the application filed as it is mentioned in the order that the wife has to undergo a cardiac surgery in the U.S.A., is real. In the application filed by the revision petitioner before the court below what has been mentioned is that his wife is a cardiac patient and that she has undergone cardiac surgery.

5. The major contention of the counsel for the respondent is that the revision petition filed is not maintainable under Section 397(2)Cr.P.C. as the order is only an interlocutory one. Counsel for the revision petitioner has relied on the decisions reported in **Rajendra Kumar Sitaram Pande v. Union, AIR 1999 SC 1028, Dharmarajan v. State 2002(2)KLT 666** and **K.K.Patel v. State of Gujarat, (2000)6 SCC 195**. On the other hand, counsel for the respondent has relied on the decision reported in

State v. N.M.T.Joy Immaculate, AIR 2004 SC 2282 which is rendered by a Full Bench of the Supreme Court.

6. The ratio of the decision cited by the counsel for the revision petitioner in **Rajendra Kumar Sitaram Pande's case** (op. cit) is that the expression interlocutory order in S.397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the rights of the parties cannot be said to be an interlocutory order (quoting from **Amar Nath v. State of Haryana, 1977 SC 2185**). In **Rajendra Kumar Sitaram Pande case (op.cit)** the order challenged was the one issued by the Magistrate directing issue of process in a private complaint. Counsel for the revision petitioner has contended that the right to travel is a fundamental right guaranteed under Article 21 of the Constitution of India and rightly so. Of course, interlocutory order has not been defined in the court. In **V.C.Shukla v. State, AIR 1980 SC 962**, the Apex Court has held that the term interlocutory order should be given

a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power can be exercised if the order was not purely interlocutory but intermediate or quasi judicial. The decision of the Supreme Court in **Madhu Limaye v. State of Maharashtra,(1977)4 SCC 551** that an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding cannot be held to be an interlocutory order. The Full Bench of the Supreme Court in **State v. N.M.T.Joy Immaculate (op.cit)** has held that the order on the petition challenging the order of the Magistrate giving the petitioner in police custody and then to judicial custody cannot be said to be an order attracting the revisional jurisdiction. The Court has reiterated that the feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings. In case if the objections raised by the accused were upheld, the entire proceedings would have been terminated, the order cannot be treated as an interlocutory order. I find that the Full Bench decision of the Supreme Court in **State v. N.M.T.Joy**

Immaculate (op.cit) has to be treated as the law on the point.

Of course, the High Court has the power to set aside any illegal order invoking the power under Section 482 or under Article 227 of the Constitution of India as proposed by the counsel for the revision petitioner vide in **Re Sr.Abaya, 2006 (2)KLT 1001**. But the above power is to be exercised only sparingly and in exceptional cases. The instant matter is not one such case. Hence, I find that the order of the court below is only an interlocutory order and the revisional jurisdiction will not be attracted. The Crl.revision petition is dismissed.

Sd/-

K.R.UDAYABHANU, JUDGE

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